

**CEQA FINDINGS:****Certification of the EIR, Rejection of Alternatives and  
Statement of Overriding Considerations for the Broadway Valdez District Specific Plan****I. INTRODUCTION**

1. These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 et seq; "CEQA") and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.) by the City of Oakland Planning Commission in connection with the Environmental Impact Report (EIR) prepared for the Broadway Valdez District Specific Plan (BVDSP or Project), a 25-year planning document that provides goals, policies and development regulations to guide the Plan Area's future development and serves as the mechanism for insuring that future development is coordinated and occurs in an orderly and well-planned manner.
2. These CEQA findings are attached and incorporated by reference into each and every staff report, resolution and ordinance associated with approval of the Project.
3. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

**II. PROJECT DESCRIPTION**

4. Broadway Valdez District Specific Plan encompasses the area along both sides of Broadway, extends 0.8 miles from Grand Avenue to I-580. The Plan Area includes approximately 95.5 acres, including 35.1 acres in public right-of-way and 60.4 acres of developable land. The BVDSP provides a comprehensive vision for the Plan Area along with goals, policies and development regulations to guide the Plan Area's future development and serves as the mechanism for insuring that future development is coordinated and occurs in an orderly and well-planned manner. The BVDSP divides the Plan Area into two distinct but interconnected subareas: the Valdez Triangle and the North End. Each of these subareas is proposed to have a different land use focus that responds to specific site conditions and development contexts in order to create and reinforce distinct neighborhood identities and provide variety to development along this section of Broadway. The BVDSP would promote the development of a destination retail district within the Valdez Triangle Subarea that is focused on comparison goods retailers and takes advantage of its adjacency to the Uptown and "Art Murmur Gallery Districts," and its accessibility to transit and regional routes. The BVDSP would also encourage development of a complementary mix of entertainment, office, and residential uses within the Valdez Triangle. The BVDSP envisions the North End Subarea as an attractive, mixed-use district that would link the Downtown to the Piedmont Avenue, Pill Hill, and North Broadway areas, and be integrated with the adjoining residential and medical districts. In order to achieve the destination retail district and mixed use neighborhood vision, the BVDSP proposes a series of improvements related to transportation, affordable housing, historic resource preservation and enhancement, streetscape, plaza, parking and utility infrastructure. These recommended plan improvements are summarized in Chapter 8, Table 8.6 of the BVDSP.

The BVDSP also includes a robust set of policies and incentives to preserve and enhance existing buildings, including those that are not deemed to be CEQA historic resources. These policies and incentives comprise "Historic Preservation Sub-Alternative B" which was analyzed in the Draft EIR. The BVDSP, in combination with Historic Preservation Sub-Alternative B is now "the Project" that City staff is recommending for adoption. For ease of administrative purposes, the changes noted above have been made to the May 2014 Final Draft Specific Plan.

Concurrent, but separately, the project also includes changes to the General Plan (text and map changes); Municipal Code and Planning Code amendments; Zoning Maps and Height Maps; and new design guidelines (collectively called "Related Actions") to help implement the BVDSP vision and goals.

General Plan Changes: With respect to the General Plan, proposed General Plan Amendments include:

- Much of the Community Commercial land use designation would be maintained or expanded to those areas that were formerly designated Institutional throughout the North End subarea;
- The Central Business District designation would be expanded further north to encompass most of the Valdez Triangle;
- Areas along Brook Street and Richmond Avenue would be designated Mixed Housing Type Residential to protect existing residential uses, and;
- A small area between Harrison Street and Bay Place that is currently designated as Urban Residential and Neighborhood Center Mixed Use would be designated Community Commercial.

In addition, the maximum floor area ratio (FAR) for areas with the Community Commercial General Plan land use designation within the Broadway Valdez District Specific Plan area *only* would be increased to 8.0 (all other areas in the City designated as Community Commercial would still retain the maximum FAR of 5.0).

Planning Code and Map Changes: The BVDSP proposes four (4) new district-specific zoning classifications that would replace the existing zoning. These district-specific zones follow a nomenclature established by the City in other districts, such as the Wood Street District, Oak to Ninth, and the Kaiser Permanente Medical Center areas. The new Broadway Valdez zone districts are identified by the descriptive prefix of “D-BV” which signifies “District - Broadway Valdez.” The four (4) new district-specific zoning classification would be as follows: D-BV-1 Retail Priority Sites would be the most restrictive regarding uses and ground floor uses in particular; D-BV-4 Mixed Use would be the least restrictive regarding uses; D-BV-2 Retail would require that ground floor uses consist of retail, restaurant, entertainment, or arts activities; and D-BV-3 Mixed-Use Boulevard would allow for a wider range of ground floor office and other commercial activities than in D-BV-2. D-BV-4 Mixed Use would allow the widest range of uses on the ground floor, including both residential and commercial businesses. D-BV-1 Retail Priority Sites would only allow residential uses if a project were to include a certain size/type of retail component. An additional combining zone called “N North Large Development Site” is included on some large parcels/blocks that are within the D-BV-3 zone. These sites have large vacant or underutilized properties and are fairly deep and/or with dual street frontage. More restrictions with more active ground floor uses within the 60 feet that fronts Broadway are required. The BVDSP prioritizes the development of retail uses in designated areas of the Valdez Triangle called “Retail Priority Sites” by only allowing residential activities in these areas as a bonus to developments providing a specified minimum amount of larger format retail space that is suitable for comparison goods retail. These new zoning districts would require changes to the City’s Zoning Map. The BVDSP also proposes changes in height limits, which would be regulated by a new Height Map for the Broadway Valdez District Plan Area. In addition to the (4) new district-specific zoning districts, the BVDSP also proposes a new parking in-lieu and open space in-lieu fees, where a project applicant can voluntarily choose to pay an in-lieu fee instead of providing the amount of parking spaces or open space that is required by the new zoning districts.

Design Guidelines: The BVDSP includes detailed design guidelines for future development in the Plan Area. In general, these design guidelines aim to influence the pattern, scale, character and quality of future development. The BVDSP includes guidelines for both the public realm, which includes public right-of-ways, streets, and plazas, and for private developments. The Design Guidelines for the BVDSP provide qualitative guidance and graphic and photographic examples that will complement the development regulations included in the new Broadway Valdez District zoning districts. The Guidelines are intended to give residents, building designers, property owners, and business owners a clear guide to achieving development that improves the area’s livability while retaining its character. The Design Guidelines are one component of a full menu of implementation mechanisms (described in more detail in Chapter 8 of the Draft Specific Plan) that together will help achieve the BVDSP’s goals and policies. They will complement other regulatory mechanisms to give residents, building designers, property owners, and business owners a clear guide to achieving high quality development.

Municipal Code Changes: The BVDSP proposes to revise the City of Oakland’s Master Fee Schedule to include a new parking in-lieu fee and a new open space in-lieu fee (described above).

### III. ENVIRONMENTAL REVIEW OF THE PROJECT

5. Pursuant to CEQA and the CEQA Guidelines, a Notice of Preparation (NOP) of an EIR was published on **April 30, 2012**. The NOP, which included notice of the EIR scoping sessions mentioned below, was distributed to state and local agencies, published in the Oakland Tribune, mailed and emailed to individuals who have requested to specifically be notified of official City action on the project and mailed to property owners both within the Project area and up to 300 feet beyond the Project area boundaries. On **May 14, 2012**, the Landmarks Preservation Advisory Board conducted a duly noticed EIR scoping session concerning the scope of the EIR. On **May 16, 2012**, the Planning Commission conducted a duly noticed EIR scoping session concerning the scope of the EIR. The public comment period on the NOP ended on **May 30, 2012**.

6. A Draft EIR was prepared for the Project to analyze its environmental impacts. Pursuant to CEQA and the CEQA Guidelines, a Notice of Availability/Notice of Release and the Draft EIR was published on **September 20, 2013**. The Notice of Availability/Notice of Release of the Draft EIR was distributed to appropriate state and local agencies, published in the Oakland Tribune, posted at four locations throughout the project area, mailed and e-mailed to individuals who have requested to specifically be notified of official City actions on the project, and mailed to property owners both within the Project area and up to 300 feet beyond the Project area boundaries. Copies of the Draft EIR were also distributed to appropriate state and local agencies, City officials including the Planning Commission, and made available for public review at the Planning and Building Department (250 Frank H. Ogawa Plaza, Suite 3315) and on the City's website. A duly noticed Public Hearing on the Draft EIR was held at the **October 14, 2013** meeting of the Landmarks Preservation Advisory Board, and at the **October 16, 2013** and **October 30, 2013** meetings of the Planning Commission. The Draft EIR was properly circulated in excess of the required 45-day public review period. The public comment period on the Draft EIR closed on **November 12, 2013** (which was extended from the original closing date of November 4, 2013 after the Planning Commission decided to hold a second meeting on the Draft EIR, as noted above).

7. The City received written and oral comments on the Draft EIR. The City prepared responses to comments on environmental issues and made changes to the Draft EIR. The responses to comments, changes to the Draft EIR, and additional information were published in a Final EIR/Response to Comment document on **May 1, 2014**. The Draft EIR, the Final EIR and all appendices thereto constitute the "EIR" referenced in these findings. The Final EIR was made available for public review on **May 1, 2014**, twenty (20) days prior to the duly noticed **May 21, 2014**, Planning Commission public hearing. The Notice of Availability/Notice of Release of the Final EIR was distributed on **April 24, 2014** to those state and local agencies who commented on the Draft EIR, posted at four locations throughout the project site, mailed and e-mailed to individuals who have requested to specifically be notified of official City actions on the project, and mailed to property owners both within the Project area and up to 300 feet beyond the Project area boundaries. Copies of the Draft EIR and Final EIR were also distributed to those state and local agencies who commented on the Draft EIR, City officials including the Planning Commission, and made available for public review at the Planning and Building Department (250 Frank H. Ogawa Plaza, Suite 3315), and on the City's website. Pursuant to CEQA Guidelines, responses to public agency comments have been published and made available to all commenting agencies-- through notice, publication and distribution of the Final EIR/Response to comments Document -- at least 10 days prior to the public hearing considering certification of the EIR and the Project. The Planning Commission has had an opportunity to review all comments and responses thereto prior to consideration of certification of the EIR and prior to taking any action on the proposed Project.

### IV. THE ADMINISTRATIVE RECORD

8. The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

- a. The EIR and all documents referenced in or relied upon by the EIR.

- b. All information (including written evidence and testimony) provided by City staff to the Planning Commission and Landmarks Preservation Advisory Board relating to the EIR, the approvals, and the Project.
- c. All information (including written evidence and testimony) presented to the Planning Commission and Landmarks Preservation Advisory Board by the environmental consultant and sub-consultants who prepared the EIR or incorporated into reports presented to the Planning Commission and Landmarks Preservation Advisory Board.
- d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Project or the EIR.
- e. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the EIR.
- f. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- g. The Standard Conditions of Approval for the Project and Mitigation Monitoring and Reporting Program for the Project.
- h. All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

9. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is the Director of the Planning and Building Department, or his/her designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612.

## **V. CERTIFICATION OF THE EIR**

10. In accordance with CEQA, the Planning Commission certifies that the EIR has been completed in compliance with CEQA. The Planning Commission has independently reviewed the record and the EIR prior to certifying the EIR and approving the Project. By these findings, the Planning Commission confirms, ratifies, and adopts the findings and conclusions of the EIR as supplemented and modified by these findings. The EIR and these findings represent the independent judgment and analysis of the City and the Planning Commission.

11. The Planning Commission recognizes that the EIR may contain clerical errors. The Planning Commission reviewed the entirety of the EIR and bases its determination on the substance of the information it contains.

12. The Planning Commission certifies that the EIR is adequate to support all actions in connection with the approval of the Project and all other actions and recommendations as described in the **May 21, 2014**, Planning Commission staff report and exhibits/attachments. The Planning Commission certifies that the EIR is adequate to support approval of the Project described in the EIR, each component and phase of the Project described in the EIR, any variant of the Project described in the EIR, any minor modifications to the Project or variants described in the EIR and the components of the Project.

## **VI. ABSENCE OF SIGNIFICANT NEW INFORMATION**

13. The Planning Commission recognizes that the Final EIR incorporates information obtained and produced after the DEIR was completed, and that the Final EIR contains additions, clarifications, and modifications. The Planning Commission has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the

severity of a previously identified significant environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the City declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR. Thus, recirculation of the EIR is not required.

14. The Planning Commission finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or the CEQA Guidelines section 15088.5.

## **VII. STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM**

15. Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures and revisions to the Project identified in the EIR are implemented. The Standard Conditions of Approval and Mitigation Monitoring and Reporting Program ("SCAMMRP") is attached and incorporated by reference into the May 21, 2014 Planning Commission staff report prepared for the approval of the Project, is included in the conditions of approval for the Project, and is adopted by the Planning Commission. The SCAMMRP satisfies the requirements of CEQA.

16. The standard conditions of approval (SCA) and mitigation measures set forth in the SCAMMRP are specific and enforceable and are capable of being fully implemented by the efforts of the City of Oakland, the applicant, and/or other identified public agencies of responsibility. As appropriate, some standard conditions of approval and mitigation measures define performance standards to ensure no significant environmental impacts will result. The SCAMMRP adequately describes implementation procedures and monitoring responsibility in order to ensure that the Project complies with the adopted standard conditions of approval and mitigation measures.

17. The Planning Commission will adopt and impose the feasible standard conditions of approval and mitigation measures as set forth in the SCAMMRP as enforceable conditions of approval. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.

18. The standard conditions of approval and mitigation measures incorporated into and imposed upon the Project approval will not themselves have new significant environmental impacts or cause a substantial increase in the severity of a previously identified significant environmental impact that were not analyzed in the EIR. In the event a standard condition of approval or mitigation measure recommended in the EIR has been inadvertently omitted from the conditions of approval or the SCAMMRP, that standard condition of approval or mitigation measure is adopted and incorporated from the EIR into the SCAMMRP by reference and adopted as a condition of approval.

## **VIII. FINDINGS REGARDING IMPACTS**

19. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the Planning Commission adopts the findings and conclusions regarding impacts, standard conditions of approval and mitigation measures that are set forth in the EIR and summarized in the SCAMMRP. These findings do not repeat the full discussions of environmental impacts, mitigation measures, standard conditions of approval, and related explanations contained in the EIR. The Planning Commission ratifies, adopts, and incorporates, as though fully set forth, the analysis, explanation, findings, responses to comments and conclusions of the EIR. The Planning Commission adopts the reasoning of the EIR, staff reports, and presentations provided by the staff as may be modified by these findings.

20. The Planning Commission recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The Planning Commission acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The Planning Commission has, through review of the evidence and analysis presented in the record, acquired a

better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the Planning Commission to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

21. As a separate and independent basis from the other CEQA findings, pursuant to Public Resources Code section 21083.3 and Guidelines section 15183, the Planning Commission finds: (a) the project is consistent with Land Use and Transportation Element (LUTE) of the General Plan (EIR certified in March 1998); (b) the Housing Element of the General Plan (EIR certified in January 2011); (c) the Estuary Policy Plan (EIR certified in November 1998); and (d) the Historic Preservation Element of the General Plan (EIR certified in May 1998); (e) feasible mitigation measures identified in the foregoing were adopted and have been, or will be, undertaken; (f) this EIR evaluated impacts peculiar to the project and/or project site, as well as off-site and cumulative impacts; (g) uniformly applied development policies and/or standards (hereafter called "Standard Conditions of Approval") have previously been adopted and found to, that when applied to future projects, substantially mitigate impacts, and to the extent that no such findings were previously made, the City Planning Commission hereby finds and determines that the Standard Conditions of Approval (or "SCA") substantially mitigate environmental impacts (as detailed below); and (h) no substantial new information exists to show that the Standard Conditions of Approval will not substantially mitigate project and cumulative impacts.

## **IX. SIGNIFICANT BUT MITIGABLE IMPACTS**

22. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the EIR, the SCAMMRP, and the City's Standard Conditions of Approval, the Planning Commission finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially significant effects on the environment. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Project mitigation measures, or where indicated, through the implementation of Standard Conditions of Approval (which are an integral part of the SCAMMRP):

23. Aesthetics: Implementation of the Specific Plan and Related Actions proposed as part of the project would allow for increased land use densities and intensities possibly impacting the area's existing visual quality. However, application of SCA 12; SCA 13; SCA 15; SCA 17 and SCA 18-21, which address landscaping improvements and utilities and other improvements in the right-of-way reduce the project's potential impacts on existing visual quality to a less than significant level. Any potential impact of new lighting will be reduced to a less than significant level through implementation of SCA 40 which requires approval of plans to adequately shield lighting to prevent unnecessary glare onto adjacent properties. Moreover, compliance with various policies and goals contained in the City's general plans and mitigation measures contained in the Land Use and Transportation Element EIR, Housing Element EIR, and Historic Preservation Element EIR would ensure there would not be significant adverse aesthetic impacts with respect to visual quality or scenic public vistas.

24. Air Quality: The BVDSP includes goals that address reduced trip generation and are consistent with the goals of the 2010 Bay Area Clean Air Plan (CAP). Furthermore, future development facilitated by BVDSP would include commercial and residential land uses that would be required to comply with SCA 25, *Parking and Transportation Demand Management*, if a proposed project generated 50 or more net new AM or PM peak hour vehicle trips. Therefore, development under the Specific Plan would not be considered to fundamentally conflict with CAP, and would be considered to have a less-than-significant impact with regard to transportation control measures in the CAP. Additionally, the potential exposure of new residents to toxic air contaminants (TAC) poses a risk, however, application of the City's SCA B which would entail the preparation of site-specific health risk assessments, would reduce TAC exposure to new sensitive receptors a less-than-significant level. There are no sources of odor identified by the City's database of potential odor generating facilities sources within the Plan Area. Thus, the potential for sensitive receptors within the Plan Area to be impacted by substantial objectionable odors affecting a substantial number of people would be less than significant.

25. Biology: Implementation of the Specific Plan and Related Actions proposed as part of the project would allow for increased land use densities and intensities possibly impacting the area's biological resources. However, application of SCA 43 – 47, which address tree protection actions; SCA 35 which addresses hazards best management practices; SCA 55, SCA 75, SCA 80, SCA 83, which address erosion and sedimentation control, stormwater management and creek protection; and SCA D, which addresses bird collision reduction, reduce the project's potential impacts to biological resources to a less-than-significant level.

26. Cultural Resources: Implementation of the Specific Plan and Related Actions proposed as part of the project would allow for increased land use densities and intensities possibly impacting the area's archeological or paleontological resources, or disturb human remains. However, application of SCA 52, SCA 53 and SCA 54 would reduce the project's potential impacts the aforementioned resources to a less-than-significant level.

27. Geology Soils and Geohazards: Implementation of the Specific Plan and Related Actions proposed as part of the project would allow for increased land use densities and intensities possibly exposing people to seismic or geologic hazards. However, application of SCA 58 and SCA 60, which require geologic and soils reports under certain circumstances would reduce the project's potential impacts the aforementioned resources to a less-than-significant level.

28. Greenhouse Gases: The proposed project would not fundamentally conflict with a plan, policy, or regulation adopted for the purpose of reducing greenhouse gas (GHG) emissions. The project would allow for a diverse mix of land uses and transportation and infrastructure improvements that provide stronger connections to transit, reflective of some of the strategies in place to reduce greenhouse gas emissions. Specifically, adoption and development under the Specific Plan would not conflict with the ECAP, current City Sustainability Programs, or General Plan policies or regulations regarding GHG reductions and other local, regional and statewide plans, policies and regulations that are related to the reduction of GHG emissions and relevant to the Specific Plan. Further, adoption and development under the Specific Plan would be subject to all the regulatory requirements including the City's approach to reducing GHG emissions (and significant GHG emissions impacts, if applicable) by requiring the preparation and implementation of project-specific GHG Reduction Plans (SCA F), which would reduce GHG emissions of the adoption and development under the Specific Plan to the greatest extent feasible. SCAs also include conditions to address adherence to best management construction practices and equipment use (SCA A and SCA 41) and minimize post construction stormwater runoff that could affect the ability to accommodate potentially increased storms and flooding within existing floodplains and infrastructure systems (SCA 55, SCA 75, and SCA 83), to reduce demand for single occupancy vehicle travel (SCA 25), to increase landscaping to absorb CO<sub>2</sub>e emissions (SCA 12, SCA 13, SCA 15, SCA 17, SCA 18, and SCA 46), and facilitate waste reduction and recycling (SCA 36). Overall, adoption and development under the Specific Plan would not conflict with any applicable plans, policies or regulations adopted with the intent to reduce GHG emissions. The impact would be less than significant.

29. Hazards and Hazardous Materials: Implementation of the Specific Plan and Related Actions proposed as part of the project would allow for increased land use densities and intensities that possibly would involve use of hazardous materials as part of routine transport of materials, building demolition or construction, or the operations of certain businesses. However, the use of construction best management practices which would be required to be implemented as part of construction and required by SCA 35, *Hazards Best Management Practices*, along with SCA 41, *Asbestos Removal in Structures*, SCA 63 and SCA 65, *Lead-Based Paint/Coatings, Asbestos, or PCB Occurrence Assessment*; SCA 64, *Environmental Site Assessment Reports Remediation*; and SCA 67, *Health and Safety Plan per Assessment* would minimize the potential adverse effects to groundwater and soils; SCA 68, *Best Management Practices for Soil and Groundwater Hazards*, and SCA 69, *Radon or Vapor Intrusion from Soil or Groundwater Sources*. Furthermore, adoption and development under the Specific Plan would be required to comply with the City's SCA 66, *Other Materials Classified as Hazardous Waste*, and SCA 74, *Hazardous Materials Business Plan*, which outlines the guidance for transporting hazardous materials safely to and from the project sites, in addition to SCA 61, *Site Review by Fire Services Division*, to ensure overall compliance of projects for hazardous materials. Moreover, compliance with various policies, and goals contained in the City's general plans and other regulatory requirements would ensure there would not be significant adverse hazards and hazardous materials impacts.

30. Hydrology/Water Quality: Adoption and development under the Specific Plan could include construction activities that employ excavation, soil stockpiling, grading, and use of hazardous chemicals, such as fuels and oil. Construction could also occur along the day-lighted portion of Glenn Echo Creek north of Grand Avenue along Harrison Street. All of the Plan Area except for a small area in the easternmost part located along Glenn Echo Creek is outside of the 100-year flood zone. The Plan area would not be susceptible to mudflow, seiche waves or inundation from tsunami.

Implementation of the following Standard Conditions of Approval: 34 or 55 *Erosion and Sedimentation Control Plan*; SCA 75, *Stormwater Pollution Prevention Plan*; SCA 78, *Site Design Measures for Post-Construction Stormwater Management*; SCA 79, *Source Control Measures to Limit Stormwater Pollution*; SCA 80, *Post-construction Stormwater Pollution Management Plan*; SCA 81, *Maintenance Agreement for Stormwater Treatment Measures*; SCA 82, *Erosion, Sedimentation, and Debris Control Measures*; SCA 85, *Creek Monitoring*; and SCA 86, *Creek Landscaping Plan*, and SCA 89 *Regulatory Permits and Authorizations* and SCA 91 *Structures within a Floodplain* would ensure that development under the BVDSP would not result in significant impacts as a result of runoff/erosion, groundwater depletion and/or flooding/hazards, and would have a less than significant impact on hydrology and water quality. Furthermore, adherence to the Standard Conditions of Approval and compliance with the City of Oakland Grading Ordinance; the Creek Protection, Stormwater Management, and Discharge Control Ordinance would reduce the potential impact to a less-than-significant level.

31. Land Use: Although the Specific Plan would allow for taller buildings, the adoption and development under the Specific Plan would not physically divide the community. Although, as described above, adoption and development under the Specific Plan would result in a change in land use patterns throughout the Plan Area, the transition would occur incrementally over time. In addition, the developed Plan Area would represent a strengthening and revitalization of the community represented in the larger area including the residential, institutional, entertainment and downtown office uses surrounding the Plan Area. When considered in the context of this portion of the City, the transition of land use and land use intensity would benefit and serve the needs of land uses adjacent and nearby. A more active and pedestrian friendly environment would serve to enhance connections within the Plan Area, as well as to, and between, the surrounding neighborhoods. Therefore, the Specific Plan would enhance connectivity in the community rather than result in a perceived or physical division. The General Plan's existing policy directions on compatible land uses would apply to future development under the Specific Plan. Conformance to the General Plan, including Land Use and Transportation Element policies (*Policy N1.8, Policy N2.1, Policy N5.2, Policy N7.1, Policy N7.2 and Policy N8.2*) would discourage development of incompatible land uses or land uses that would result in a division within an established community. Implementation of Specific Plan policies and General Plan policies, including but not limited to those described above, means that no significant land use impacts related to land use incompatibility or the physical division of an established community would occur as a result of the adoption and development under the Specific Plan.

32. Noise: Project construction and operation would potentially increase construction noise levels and excessive ground borne vibration. Implementation of SCA 28, 29, 30, 39 and 57 would reduce impacts from construction noise and vibration. SCA have been developed by the City of Oakland over the past decade to reduce construction noise impacts. SCA 28 restricts the hours and days of construction activity. SCA 29 requires contractors to implement a construction noise reduction program. SCA 30 establishes construction noise complaint procedures, while SCA 39 and SCA 57 establish a set of site-specific noise attenuation measures to address noise from pile driving, and to establish threshold levels of vibration and cracking that could damage fragile historic buildings during construction. These SCA are comprehensive in their content and for practical purposes represent all feasible measures available to mitigate construction noise. Implementation of these measures would reduce construction impacts associated with extreme noise actions and vibration to less than significant levels. Any noise from new ventilation equipment on the new residential construction would be required to comply with the stationary noise provisions of Chapter 17 of the Oakland Municipal Code and would reduce impacts to a less-than-significant level. Moreover, compliance with various policies, and goals contained in the City's general plans and other regulatory requirements would ensure there would not be significant adverse noise impacts with respect to construction noise.

33. Population and Housing: Because of: (a) the role of the Specific Plan in facilitating development that fulfills key components of the General Plan's vision for the Downtown Showcase District, (b) the relatively small magnitude of



Specific Plan-induced population and employment growth within the cumulative, citywide context, (c) the overall balance of growth of both jobs and housing anticipated in Oakland in the future, and (d) the Plan Area's location adjacent to Oakland's already developed Central Business District, the adoption and development under the Specific Plan would have a less than significant impact in inducing substantial population growth in a manner not contemplated by the General Plan, either directed by facilitating development of housing or businesses, or indirectly through infrastructure improvements.

34. Public Services: Future development allowed under the BVDSP could result in additional residents and employees. This potential increase in population would result in increased demand for the City's fire, police, and school services. These impacts will be reduced to a less than significant level through the implementation of SCA 4, SCA 71 and SCA 73, conditions which require building plans for development to be submitted to Fire Services for review and approval that the project adequately addresses fire hazards, and that construction equipment has spark arrestors. Moreover, compliance with various policies, and goals contained in the City's general plans and other regulatory requirements would ensure there would not be significant adverse public services impacts.

35. Traffic and Transportation:<sup>1</sup>

- a) Intersection #13 (MacArthur Boulevard/Piedmont Avenue): The development under the Specific Plan would degrade the MacArthur Boulevard/Piedmont Avenue intersection (Intersection #13) from LOS D to LOS E (Significant Threshold #1) during the weekday PM peak hour under Existing Plus Project conditions.. Implementation of Mitigation TRANS-1 including: providing an additional through lane on the eastbound MacArthur Boulevard approach (currently temporarily closed for construction of Kaiser Hospital; expected to open in 2014 after completion of that construction); modifying the northbound approach from the current configuration which provides one right-turn lane and one shared through/left lane to provide one right-turn lane, one through lane, and one left-turn lane; and upgrading intersection signal equipment, optimizing signal timing at this intersection, and coordinating signal timing changes with the adjacent intersections that are in the same signal coordination group would reduce this impact to a less than significant level.
- b) Intersection #17 (Lake Park Avenue/Lakeshore Avenue): The development under the Specific Plan would degrade overall intersection operations from LOS E to LOS F and increase intersection average delay by four seconds or more (Significant Threshold #2) at the Lake Park Avenue/Lakeshore Avenue intersection (Intersection #17) during the weekday PM peak hour under Existing Plus Project conditions. Implementation of Mitigation TRANS-3 including optimizing signal timing at this intersection, and coordinating signal timing changes with the adjacent intersections that are in the same signal coordination group would reduce this impact to a less than significant level.
- c) Intersection #36 (24th Street/Broadway): The development under the Specific Plan Project would add more than 10 peak-hour trips to 24th Street/Broadway intersection (Intersection #36) which would meet peak-hour signal warrant (Significant Threshold #6) under Existing Plus Project, 2020 Plus Project, and 2035 Plus Project conditions. Implementation of Mitigation TRANS-4/TRANS-9/TRANS-23 including optimizing signal timing at this intersection, and coordinating signal timing changes with the adjacent intersections that are in the same signal coordination group would reduce this impact to a less than significant level.
- d) Intersection #39 (23rd Street/Broadway): The development under the Specific Plan Project would add more than 10 peak-hour trips to 23rd Street/Broadway intersection (Intersection #39) which would meet peak-hour signal warrant (Significant Threshold #6) under Existing Plus , 2020 Plus Project, and 2035 Plus Project conditions. Implementation of Mitigation TRANS-5/TRANS-11/TRANS-25 including optimizing signal timing at this intersection, and coordinating signal timing changes with the adjacent intersections that are in the same signal coordination group would reduce this impact to a less than significant level.

<sup>1</sup> In addition to the mitigation measures listed, the SCA that apply to transportation and circulation including: SCA 20 (Improvements in the Public Right-Of-Way - General), SCA 21 (Improvements in the Public Right-Of-Way - Specific), SCA 25 (Parking and Transportation Demand Management), SCA 33 (Construction Traffic and Parking) would also reduce the potentially significant impacts listed to less than significant.

- e) Intersection #8 (40th Street/Telegraph): The development under the Specific Plan would increase the total intersection v/c ratio by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more (Significant Threshold #5) during the weekday PM peak hour at the 40th Street/Telegraph Avenue intersection (Intersection #8) under 2035 conditions. Implementation of Mitigation TRANS-15 including providing permitted-protected operations on the eastbound and westbound approaches; optimizing signal timing; and coordinating signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group would reduce these impacts to a less than significant level.
- f) Intersection #11 (West MacArthur Boulevard/Telegraph Avenue): The development under the Specific Plan would increase the total intersection v/c ratio by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more (Significant Threshold #5) at an intersection operating at LOS F during the weekday PM peak hour at the West MacArthur Boulevard/Telegraph Avenue intersection (Intersection #11) under 2035 conditions. Implementation of Mitigation TRANS-16 including providing protected left-turn phase(s) for the northbound and southbound approaches; optimizing signal timing; and coordinating signal timing changes at this intersection with the adjacent intersections that are in the same signal coordination group would reduce these impacts to a less than significant level.
- g) Transit, Vehicle/Bicycle/Pedestrian/Bus Rider Safety, Consistency with Adopted Policies or Plans Supporting Alternative Transportation, Construction-Period Impacts; Changes in Air Traffic Patterns: with implementation of applicable SCA and policies in the BVDSP, development under the Specific Plan would result in less than significant impacts for all of the aforementioned issue areas, and no mitigation measures are required.

36. Utilities/Service Systems: New construction under the BVDSP would result in increased solid waste, stormwater and wastewater generation, as well as energy usage. These impacts will be reduced to a less than significant level through the implementation of SCA 36, which requires solid waste reduction and recycling and SCA 75, 80 and 91, which require project applicants to submit stormwater pollution prevention plans, to confirm the state of repair of the City's surrounding stormwater and sanitary sewer system, and to make the necessary infrastructure improvements to accommodate the proposed project. Additionally, SCA H and SCA I require compliance with the City's Green Building Ordinance. Moreover, compliance with various policies, and goals contained in the City's general plans and other regulatory requirements would ensure there would not be significant adverse utilities/service systems impacts.

## **X. SIGNIFICANT AND UNAVOIDABLE IMPACTS**

37. Under Public Resources Code sections 21081(a)(3) and 21081(b), and CEQA Guidelines sections 15091, 15092, and 15093, and to the extent reflected in the EIR and the SCAMMRP, the Planning Commission finds that the following impacts of the Project remain significant and unavoidable, notwithstanding the imposition of all feasible Standard Conditions of Approval and mitigation measures as set forth below.

38. Aesthetics, Shadow and Wind AES-4 (Shadow), AES-5 (Wind), AES-6 (Cumulative Shadow and Wind): Adoption and development under the Specific Plan could result in substantial new shadow that could shade the Temple Sinai. Although Mitigation Measure AES-4 would require a shadow study to evaluate the shadowing effects, it cannot be known with certainty that a project redesign would eliminate the potential for new significant shading on the Temple Sinai. Therefore, the impact is conservatively deemed significant and unavoidable. Adoption and development under the Specific Plan has the potential to result in adverse wind conditions in cases where structures 100 feet in height or taller are proposed for development. Although Mitigation Measure AES-5 would require a wind study to evaluate the effects of proposed development, it cannot be known with certainty that a project redesign would eliminate the potential for new adverse wind impacts. Therefore, the impact is conservatively deemed significant and unavoidable. For the reasons listed above, adoption and development under the Specific Plan is conservatively deemed to result in significant cumulative wind, and shadow impacts. Therefore, adoption and development under the Specific Plan, in combination with other past, present, and reasonably foreseeable future projects within and around the Plan Area, also is conservatively deemed significant and unavoidable. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

39. **Air Quality AIR-1 (Construction Emissions), AIR-2 (Operational Emissions), AIR-4 (Gaseous TACs):** Construction associated with adoption and development under the Specific Plan would result in average daily emissions in excess of 54 pounds per day of ROG. Even with the inclusion of SCA A (Construction Related Air Pollution Controls) and Recommended Measure AIR-1, it cannot reliably be demonstrated that ROG emissions from application of architectural coatings associated with adoption and development under the Specific Plan would be reduced to 54 pounds per day or less. To assess full buildout of the Broadway Valdez Development Program under this threshold, which is intended for project-level analysis, aggressive and conservative assumptions were employed and thus yielded a conservative result. Therefore, the impact is conservatively deemed significant and unavoidable. Adoption and development under the Specific Plan would result in operational average daily emissions of more than 54 pounds per day of ROG, NOX, or PM<sub>2.5</sub>; 82 pounds per day of PM<sub>10</sub>; or result in maximum annual emissions of 10 tons per year of ROG, NOX, or PM<sub>2.5</sub> or 15 tons per year of PM<sub>10</sub>. Although implementation of SCA 25 and Recommended Measure AIR-2 would reduce environmental effects on air quality, adoption and development under the Specific Plan still would contribute substantially to an existing air quality violation (ozone precursors and particulate matter). Therefore, even with implementation of Recommended Measure AIR-2, this impact would remain significant and unavoidable for emissions of ROG, NOX, and PM<sub>10</sub>. To assess full buildout of the Broadway Valdez Development Program under this threshold, which is intended for project-level analysis, aggressive and conservative assumptions were employed and thus yielded a conservative result. Therefore, the significant and unavoidable determination is considered conservatively significant and unavoidable. Adoption and development under the Specific Plan could generate substantial levels of Toxic Air Contaminants (TACs) under cumulative conditions resulting in (a) a cancer risk level greater than 100 in a million, (b) a non-cancer risk (chronic or acute) hazard index greater than 10.0, or (c) annual average PM<sub>2.5</sub> of greater than 0.8 micrograms per cubic meter as a result of project operations. Although, due to the BAAQMD's permitting requirements, residual risk for a given generator would be less than 10 in one million, and although implementation of Mitigation Measure AIR-4 would substantially reduce potential cancer risks associated with DPM, the degree to which multiple sources, if concentrated on one area, would maintain cumulative risks to below 100 in one million cannot be assured. Therefore, the impact is conservatively deemed significant and unavoidable. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

40. **Cultural Resources CUL-1 (project), CUL-5 (cumulative):** Adoption and development under the Specific Plan could result in the physical demolition, destruction, relocation, or alteration of historical resources that are listed in or may be eligible for listing in the federal, state, or local registers of historical resources. Adoption and development under the Specific Plan combined with cumulative development in the Plan Area and its vicinity, including past, present, existing, approved, pending, and reasonably foreseeable future development, would contribute considerably to a significant adverse cumulative impact to cultural resources. Implementation of proposed Specific Plan policies, Oakland Planning Code 17.136.075 (*Regulations for Demolition or Removal of Designated Historic Properties and Potentially Designated Historic Properties and Potentially Designated Historic Properties*), SCA 52, 53, 54, 56 and 57, as well as Mitigation Measure CUL-1 would reduce potential impacts, but not to a less-than-significant level for the Plan Area and its vicinity. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

41. **Greenhouse Gases GHG-1 (project-level):** Adoption and development under the Specific Plan would produce greenhouse gas emissions that exceed 1,100 metric tons of CO<sub>2</sub>e per year and that would exceed the project-level threshold of 4.6 metric tons of CO<sub>2</sub>e per service population annually. Although future projects under the Specific Plan would be subject to SCA F, GHG Reduction Plan, and SCA 25, Parking and Transportation Demand Management, according to the specific applicability criteria, and GHG emissions would be reduced through project-by-project implementation of project-specific reduction measures, it cannot be guaranteed that sufficient reductions can be achieved. Therefore, the impact is conservatively deemed significant and unavoidable. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

42. **Noise NOI-5 (traffic noise), NOI-6 (cumulative) and NOI-7 (cumulative):** Traffic generated by adoption and development under the Specific Plan could substantially increase traffic noise levels in the Plan Area. Traffic generated by adoption and development under the Specific Plan, in combination with traffic from past, present, existing, approved, pending and reasonably foreseeable future projects, could substantially increase traffic noise levels in the Plan Area; and construction and operational noise levels in combination with traffic from past, present, existing, approved, pending and

reasonably foreseeable future projects, could increase ambient noise levels. Adoption and development under the Specific Plan could result in stationary noise sources, such as rooftop mechanical equipment and back-up generators; that when combined with noise from traffic generated by adoption and development under the Specific Plan; as well as from past, present, existing, approved, pending and reasonably foreseeable future projects; could substantially increase noise levels at sensitive land uses in the Plan Area. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

43. Traffic and Transportation TRANS-2, TRANS-7 and TRANS-17:<sup>2</sup> The development under the Specific Plan would degrade the *Perry Place/I-580 Eastbound Ramps/ Oakland Avenue* intersection (**Intersection #15**) from LOS E to LOS F and increase intersection average delay by four seconds or more during the weekday PM peak hour under Existing Plus Project and 2020 Plus Project conditions. Under Cumulative Year 2035 plus Project conditions, development under the Specific Plan would increase the total intersection v/c ratio by 0.03 or more, and increase the v/c ratio for a critical movement by 0.05 or more at this intersection, which would operate at LOS F during the weekday PM peak hour. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

44. Traffic and Transportation TRANS-6, TRANS-12 and TRANS-26: The development under the Specific Plan Project would add more than 10 peak-hour trips to *23rd Street/Harrison Street* intersection (**Intersection #40**) which would meet peak-hour signal warrant under Existing Plus Project, 2020 Plus Project and 2035 Plus Project conditions. With implementation of Mitigation Measure TRANS-6, this intersection may improve to LOS A during both weekday PM and Saturday peak hours under Existing Plus Project conditions; and may improve to LOS B during the weekday PM peak hour and LOS A during the Saturday peak hour under 2020 Plus Project and 2035 Plus Project conditions. However, the specific improvements of MM TRANS-6 may result in potential secondary impacts at Grand Avenue/Harrison Street intersection (Intersection #52) under Existing Plus Project, 2020 Plus Project and 2035 Plus Project conditions. Therefore, the impact is conservatively deemed significant and unavoidable. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

45. Traffic and Transportation TRANS-8 and TRANS-19: The development under the Specific Plan would increase the total intersection v/c ratio by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more during the weekday PM peak hour which would operate at LOS F under 2020 conditions, and during the weekday PM and Saturday peak hours which would operate at LOS F under 2035 conditions at the *Lake Park Avenue/Lakeshore Avenue* intersection (**Intersection #17**). These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

46. Traffic and Transportation TRANS-10 and TRANS-24: The development under the Specific Plan would increase the total intersection v/c ratio by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more at an intersection operating at LOS F during the weekday AM and PM peak hours at the *27th Street/24th Street/Bay Place/Harrison Street* intersection (**Intersection #37**) under 2020 conditions. Development under the Specific Plan would also would increase the total intersection v/c ratio by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more at an intersection operating at LOS F during the weekday AM and PM peak hours and degrade overall intersection operations from LOS E to LOS F and increase intersection average delay by four seconds or more during the Saturday peak hour under 2035 conditions. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

47. Traffic and Transportation TRANS-13 and TRANS-27: The development under the Specific Plan would increase the v/c ratio for the total intersection by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more at the *West Grand Avenue/Northgate Avenue* intersection (**Intersection #47**) which would operate at LOS F during the weekday PM peak hour under 2020 Plus Project and 2035 Plus Project conditions. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

48. Traffic and Transportation TRANS-14: The development under the Specific Plan would increase the v/c ratio for a critical movement by 0.05 or more during the weekday PM and Saturday peak hours at the *51st Street/Pleasant Valley*

<sup>2</sup> In addition to the mitigation measures listed, the SCA that apply to transportation and circulation including: SCA 20 (Improvements in the Public Right-Of-Way - General), SCA 21 (Improvements in the Public Right-Of-Way - Specific), SCA 25 (Parking and Transportation Demand Management), SCA 33 (Construction Traffic and Parking) would also apply to all of the significant and unavoidable impacts listed.

*Avenue/Broadway* intersection (**Intersection #7**) under 2035 conditions. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

49. **Traffic and Transportation TRANS-18:** The development under the Specific Plan would increase the total intersection v/c ratio by 0.03 or more at an intersection operating at LOS F during the Saturday peak hour at the *Grand Avenue/Lake Park Avenue/Santa Clara Avenue* (**Intersection #16**) intersection under 2035 conditions. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

50. **Traffic and Transportation TRANS-20:** The development under the Specific Plan would degrade overall intersection operations from LOS E to LOS F and increase intersection average delay by four seconds or more during the weekday PM peak hour at the *Piedmont Avenue/Broadway and Hawthorne Avenue/Brook Street/Broadway* intersections (**Intersections #20 and #21**) under 2035 conditions. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

51. **Traffic and Transportation TRANS-21:** The development under the Specific Plan would increase the v/c ratio for the total intersection by 0.03 or more and increase the v/c ratio for a critical movement by 0.05 or more at the *27th Street/Telegraph Avenue* intersection (**Intersection #29**) which would operate at LOS F during the weekday PM peak hour under 2035 conditions. With the implementation of Mitigation Measure TRANS-21, the total intersection v/c ratio would be reduced during the weekday PM peak hour. However, it would not be reduce the increase in v/c ratio for critical movements to 0.05 or less. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

52. **Traffic and Transportation TRANS-22:** The development under the Specific Plan would degrade overall intersection operations from LOS E to LOS F and increase intersection average delay by four seconds or more during the weekday PM peak hour and at the *27th Street/ Broadway* intersection (**Intersection #30**) under 2035 conditions. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

53. **Traffic and Transportation TRANS-28:** The development under the Specific Plan would degrade intersection operations from LOS D to LOS F and increase intersection average delay by four seconds or more during the weekday PM peak hour at the *Grand Avenue/Broadway* intersection (**Intersection #49**) in 2035. This significant and unavoidable impact is overridden as set forth below in the Statement of Overriding Considerations.

54. **Traffic and Transportation TRANS-29:** The development under the Specific Plan would degrade from LOS E or better to LOS F or increase the v/c ratio by 0.03 or more for segments operating at LOS F on the following CMP or MTS roadway segments:

- MacArthur Boulevard in both eastbound and westbound directions between Piedmont Avenue and I-580 in 2020 and 2035.
- Grand Avenue in the eastbound direction from Adeline Street to MacArthur Boulevard, and in westbound direction from Harrison Street to San Pablo Avenue in 2035.
- Broadway in the northbound direction from 27th Street to College Avenue, and in the southbound direction from Piedmont Avenue to 27th Street in 2035.
- Telegraph Avenue in the northbound direction from MacArthur Boulevard to Shattuck Avenue in 2035.
- San Pablo Avenue in the southbound direction from Market Street to 27th Street in 2035.
- Harrison Street in the northbound direction from 27th Street to Oakland Avenue in 2035.

Although traffic operations on these adversely affected roadway segments would improve with the implementation of Mitigation Measures TRANS-1, TRANS-10, TRANS-13 through TRANS-16, TRANS-20, TRANS-22, TRANS-24, TRANS-27 and TRANS-28, they would continue to operate at LOS F. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

55. **Traffic and Transportation - Previously Identified Impacted Intersections:** The City of Oakland has previously identified intersections which were found to have significant and unavoidable traffic-related impacts from recently published EIRs or traffic studies for development projects. These intersections (see Appendix G the Draft EIR, hereby incorporated by reference as if fully set forth herein) were identified in the Draft EIR in order to provide more information about potential traffic-related impacts and to provide CEQA clearance for future projects. No feasible mitigation

measures were identified for these intersections, and while a Transportation Impact Study may still be required, in accordance with standard City policy and practice, the impacts are nevertheless significant and unavoidable. These significant and unavoidable impacts are overridden as set forth below in the Statement of Overriding Considerations.

## **XI. FINDINGS REGARDING ALTERNATIVES**

56. The Planning Commission finds that specific economic, social, environmental, technological, legal and/or other considerations make infeasible the alternatives to the Project described in the EIR for the reasons stated below. And that despite the remaining significant unavoidable impacts, the Project should nevertheless be approved, as more fully set forth in Section XII below, Statement of Overriding Considerations.

57. The EIR evaluated a reasonable range of alternatives to the project that was described in the Draft EIR. Of the six alternatives considered, two were not analyzed in detail as explained in the Draft EIR. The two alternatives that were not analyzed in detail in the Draft EIR include: a) Off-site Alternative and b) Fully Mitigated Alternative. The Planning Commission adopts the EIR's analysis and conclusions eliminating these two alternatives from further consideration. Each reason given in the EIR for rejecting an alternative constitutes a separate and independent basis for finding that particular alternative infeasible, and, when the reasons are viewed collectively, provides an overall basis for rejecting an alternative as being infeasible. The four potentially feasible alternatives analyzed in detail in the EIR represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project or provide decision makers with additional information. These alternatives include: Alternative 1: the No Project Alternative, Alternative 2: the Partially Mitigated Alternative, Alternative 3: Maximum Theoretical Buildout Alternative and two Historic Preservation Sub-Alternatives, which were considered in combination with Alternative 2: the Partially Mitigated Alternative. As presented in the EIR, the alternatives were described and compared with each other and with the proposed project. After the No Project Alternative (1), Alternative (2) the Partially Mitigated Alternative in combination with Historic Preservation Sub-Alternative A was identified as the environmentally superior alternative.

58. The Planning Commission certifies that it has independently reviewed and considered the information on the alternatives provided in the EIR and in the record. The EIR reflects the Planning Commission's independent judgment as to alternatives. The Planning Commission finds that the Project provides the best balance between the City's goals and objectives and the Project's benefits as described in the Staff Report and in the Statement of Overriding Considerations below. While the Project may cause some significant and unavoidable environmental impacts, mitigation measures and the City's SCAs identified in the EIR mitigate these impacts to the extent feasible. The four potentially feasible alternatives proposed and evaluated in the EIR are rejected for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the project alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.

59. Alternative 1: No Project: Under the No Project Alternative, the Specific Plan would not be adopted, and therefore the Broadway Valdez Development Program would not occur. However, the No Project Alternative does include reasonably foreseeable development that could occur even without adoption and development under the Specific Plan. This includes certain already approved but not built projects in the Plan Area (Broadway West Grand Mixed-Use Project, Parcel B), as well as development that would reasonably be expected to occur in the Plan Area in accordance with existing plans, zoning, and regulatory framework. The No Project Alternative would result in a reduction of approximately one million square feet of retail, 580,000 square feet of office, and 400 housing units as compared to the Project. The No Project Alternative would reduce some of the SU impacts identified with the Plan to less than significant. Under the No Project Alternative, the conservative SU Aesthetics impact (AES-5), conservative SU Greenhouse Gases impact (GHG-1), SU Noise impacts (NOI-5 and NOI-6), and many of the Transportation impacts would no longer occur. No impacts would be greater than those identified with the Plan. The No Project Alternative was rejected as infeasible because it does not meet most of the basic project objectives including:

- a. Facilitating the transformation of the Plan Area into an attractive, regional destination for retailers, shoppers, employers and visitors that serves in part the region's shopping needs and captures sales tax revenue for reinvestment

in Oakland (since retail development is drastically reduced, below the recommended “critical mass” needed to sustain a retail district);

- b. Recommending design standards and guidelines to promote a well-designed neighborhood that integrates high quality design of the public and private realms to establish a socially and economically vibrant, and visually and aesthetically distinctive identity for the Broadway Valdez District;
- c. Providing a framework and identifying potential funding mechanisms to realize needed transportation, streetscape and infrastructure improvements in the Broadway Valdez District to achieve a balanced and complete circulation network of “complete streets” that accommodates the internal and external transportation needs of the Plan Area by promoting walking, biking, and transit while continuing to serve automobile traffic;
- d. Not updating the zoning which includes incentives for affordable housing, the preservation and enhancement of existing buildings of historical and architectural merit, shared parking and transportation demand management measures; and/or
- e. It would result in a reduced development program of retail, office and housing, as noted above, thus reducing employment opportunities (both short-term construction jobs as well as permanent jobs) and revenues (sales, property and other taxes), lessening economic spin off activities and not promoting an appropriate jobs/housing balance.

60. Alternative 2: Partially Mitigated: Under the Partially Mitigated Alternative, the Plan Area would be developed at a reduced intensity (roughly 25 percent of the non-residential development compared with the Broadway Valdez Development Program). The mix of uses would shift such that a higher percentage of residential development would occur compared to commercial (retail and office) development. All other aspects of the Specific Plan would be adopted with this Alternative. The Partially Mitigated Alternative would result in a reduction of approximately 990,000 square feet of retail and 400,000 square feet of office, as compared to the Project. Overall, the Partially Mitigated Alternative, excluding Historic Preservation Sub-Alternative A (which is discussed below), would reduce but not avoid the conservative SU aesthetics and cultural resources impacts; all other impacts would be similar but less severe when compared to Plan impacts. The Partially Mitigated Alternative was rejected as infeasible because:

- a. The reduction in retail and office development would defeat the primary objectives of facilitating the transformation of the Plan Area into an attractive, regional destination for retailers, shoppers, employers and visitors that serves in part the region’s shopping needs and captures sales tax revenue for reinvestment in Oakland;
- b. It would result in a reduced development program retail and office, as described above, thus reducing employment opportunities (both short-term construction jobs as well as permanent jobs) and revenues (sales, property and other taxes), lessening economic spin off activities and not promoting an appropriate jobs/housing balance; and/or
- c. Even with the reduced development, a number of air and transportation impacts still remain significant and unavoidable.

61. Historic Preservation Sub-Alternative A: The development restrictions and limitations of sub-alternative A could also be used in combination with the Specific Plan (“the Project”) and thus were classified as a sub-alternative to provide for this flexibility. (As noted earlier in Section II. Project Description above, the BVDSP, in combination with Historic Preservation Sub-Alternative B is now “the Project” that City staff is recommending for adoption and is therefore not rejected as infeasible). The intent of Historic Preservation Sub-Alternative A is to avoid the SU historic resources impacts identified for the Plan. Under this sub-alternative, development on sites with historic resources would be prohibited and thus no identified historic resources within the Plan Area would be demolished or significantly altered. Historic Preservation Sub-Alternative A would reduce the development program of retail by between approximately 140,000 and 226,000 square feet and reduce office by approximately 32,000 square feet, as compared to the Project. In addition, allowable heights on the parcel bounded by Webster, 29th Street, Broadway, and 28th Street would be reduced such that

new development within that parcel would avoid adversely shading the stained glass windows of the Temple Sinai during morning worship periods. Historic Preservation Sub-Alternative A is rejected as infeasible because:

- a. The aspect of Historic Preservation Sub-Alternative A to absolutely prohibit the demolition or significant alteration of any CEQA historic resource on private property would provide special treatment to the Plan Area over all other areas in the City, which would not facilitate development in the Plan Area;
- b. The aspect of Historic Preservation Sub-Alternative A to absolutely prohibit the demolition or significant alteration of any CEQA historic resource on private property is inconsistent with the City's existing regulations regarding the alteration of a historic property in Central Business District Zones (OMC 17.136.055) or demolition or removal of a Designated or Potentially Designated Historic Property (OMC 17.136.075). These regulations outline a procedure that a project applicant must follow in order to alter or demolish a historic property which includes demonstrating certain conditions exist to make reuse infeasible or provide equal or better replacement structure(s), among other requirements;
- c. The existing City regulations referenced above already provide adequate protection for CEQA and other historic resources;
- d. The aspect of Historic Preservation Sub-Alternative A to absolutely prohibit the demolition or significant alteration of any CEQA historic resource on private property is legally problematic as it may result in an unconstitutional "taking of property without payment of just compensation;"
- e. Key sites identified by the BVDSP as "Retail Priority Sites" because of their size or location at "gateways" to the Valdez Triangle would either not be available or much smaller areas of a site would be available due to site constraints, making potential large retail development projects less feasible; and/or
- f. It would result in a reduced development program of retail and office, as noted above, thus reducing employment opportunities (both short-term construction jobs as well as permanent jobs) and revenues (sales, property and other taxes), lessening economic spin off activities and not promoting an appropriate jobs/housing balance.

62. Partially Mitigated Alternative in Combination with the Historic Preservation Sub-Alternative A: The Partially Mitigated Alternative and Historic Preservation Sub-Alternative A are discussed in item 60 and 61 above. The Partially Mitigated Alternative in combination with Historic Preservation Sub-Alternative A would result in a reduction of approximately 990,000 square feet of retail and 400,000 square feet of office, as compared to the Project.<sup>3</sup> The Partially Mitigated Alternative in combination with Historic Preservation Sub-Alternative A was rejected as infeasible because of reasons cited in item 60. "a" through "c" above and in item 61. "a" through "f" above.

63. Alternative 3: Maximum Theoretical Buildout: The Maximum Theoretical Buildout Alternative evaluates the theoretical possibility that every parcel would be built out to the new maximum level permissible under the General Plan and Planning Code regulations as revised through adoption of the Specific Plan. Under this alternative, the Plan Area would be developed at an increased density/intensity (roughly 300 percent of the residential development and 200 percent of non-residential development assumed in the Broadway Valdez Development Program). All other aspects of the Plan would occur with this Alternative. Overall, because the Maximum Theoretical Build-out Alternative assumes an increment of growth substantially greater than the Plan, many impacts would be similar but the intensity of the impact (whether less than significant or significant and unavoidable) would be comparatively greater. The Maximum Theoretical Buildout Alternative 3 is rejected as infeasible because:

- a. All environmental impacts were significantly more severe than the Project under Alternative 3;

<sup>3</sup> The Partially Mitigated Alternative in combination with Historic Preservation Sub-Alternative A would result in the same total reduction in office and retail square footage as the Partially Mitigated Alternative excluding Historic Preservation Sub-Alternative A because the overall intent of the Partially Mitigated Alternative is to reduce development to the extent that most of the transportation impacts are avoided; it is assumed that the increment of retail and office square footage not built under Historic Preservation Sub-Alternative A, would be built elsewhere in the Plan Area.



- b. Build-out of each site to the maximum intensity is unrealistic given historical and projected development patterns; and/or
- c. The infrastructure necessary to support development would be cost prohibitive and have secondary impacts themselves.

## **XII. STATEMENT OF OVERRIDING CONSIDERATIONS**

64. The Planning Commission finds that each of the following specific economic, legal, social, technological, environmental, and other considerations and the benefits of the Project separately and independently outweigh the remaining significant unavoidable adverse impacts discussed above in Section X, and is an overriding consideration independently warranting approval. The remaining significant unavoidable adverse impacts identified above are acceptable in light of each of the overriding considerations that follow. Each individual benefit/reason presented below constitutes a separate and independent basis to override each and every significant unavoidable environmental impact, and, when the benefits/reasons are viewed collectively, provide an overall basis to override each and every significant unavoidable environmental impact.

65. The BVDSP updates the goals and policies of the General Plan, and provides more detailed guidance for specific areas within the Broadway Valdez District.

66. The BVDSP builds upon two retail enhancement studies, the *Citywide Retail Enhancement Strategy* (Conley, 2006) and the companion *Upper Broadway Strategy – A Component of the Oakland Retail Enhancement Strategy* (Conley, 2007), which identified the City's need to reestablish major destination retail in Oakland as being critical to stemming the retail leakage and associated loss of tax revenue that the City suffers annually. These reports also identified the Broadway Valdez District as the City's best opportunity to re-establish a retail core with the type of comparison shopping that once served Oakland and nearby communities, and that the City currently lacks.

67. The BVDSP provides a policy and regulatory framework to achieve one of the primary objectives to transform the Plan Area into an attractive, regional destination for retailers, shoppers, employers and visitors that serves in part the region's shopping needs and captures sales tax revenue for reinvestment in Oakland.

68. The BVDSP would create employment opportunities (both short-term construction jobs as well as permanent jobs), increase revenues (sales, property and other taxes), and promote spin off activities (as Plan workers spend some of their income on goods in the Plan area).

69. The BVDSP Development Program promotes increased densities housing in close proximity to employment generating land uses supports the City and regional objectives for achieving a jobs/housing balance and transit-oriented development.

70. The BVDSP design guidelines will ensure that future development contributes to the creation of an attractive, pedestrian-oriented district characterized by high quality design and a distinctive sense of place.

71. The BVDSP identifies a series of needed and desired improvements related to transportation, affordable housing, historic resource preservation and enhancement, streetscape, plaza, parking and utility infrastructure and regulatory tools, policies and potential funding mechanisms to realize those improvements.